



May 19, 2000

Mr. Scott A. Kelly
Deputy General Counsel
Texas A&M University System
Office of the General Counsel
301 Tarrow, 6th Floor
College Station, Texas 77840-7895

OR2000-2004

Dear Mr. Kelly:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 135950.

The Texas A&M University System ("TAMU") received two public information requests for all records relating to allegations of travel improprieties made against a TAMU professor. You state that most of the information is being provided to the requesters, but argue that some of the documents are "audit working papers of the System Internal Auditor" that are excepted from disclosure pursuant to Government Code section 552.116. We have considered the exception you claim and reviewed the submitted information.

Government Code section 552.116 provides as follows:

(a) An audit working paper of an audit of the state auditor or the auditor of a state agency or institution of higher education as defined by Section 61.003, Education Code, is excepted from the requirements of Section 552.021. If information in an audit working paper is also maintained in another record, that other record is not excepted from the requirements of Section 552.021 by this section.

(b) In this section:

(1) "Audit" means an audit authorized or required by a statute of this state or the United States and includes an investigation.

(2) “Audit working paper” includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

A governmental body that invokes section 552.116 must explain that the audit working papers are from an audit authorized or required by statute by identifying the applicable statute. Section 321.0136 of the Government Code defines an “investigation” as “an inquiry into specified acts or allegations of impropriety, malfeasance, or nonfeasance in the obligation, expenditure, receipt, or use of state funds, or into specified financial transactions or practices that may involve such impropriety, malfeasance, or nonfeasance.” You have submitted documents that were prepared or maintained by the TAMU Office of Internal Audit for the purposes of investigating the allegations of travel abuse. These documents specifically relate to the specific investigation at issue. Therefore, we agree that the information constitutes “audit working paper[s]” as contemplated in Government Code section 552.116. Accordingly, you may withhold the requested information based on section 552.116 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental

body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.–Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink that reads "Julie Reagan Watson". The signature is written in a cursive, flowing style.

Julie Reagan Watson
Assistant Attorney General
Open Records Division

JRW/nc

Ref: ID# 135950

Encl. Submitted documents

cc: Ms. Susan Schenk
4702 Hunington Drive
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(w/o enclosures)

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(w/o enclosures)